

Message Text

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47

ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 FMC-01 STR-04 COME-00 CIAE-00

DODE-00 DOTE-00 INR-07 NSAE-00 CG-00 OFA-01 DLOS-04

L-03 PM-04 NSC-05 SP-02 SS-15 OMB-01 INRE-00 SSO-00

NSCE-00 /061 R

DRAFTED BY EB/TT/MA:SVSMITH:BST

APPROVED BY EB/TT:JWBILLER

ARA/CEN:MPLATT

FMC:FSHREVES

EB/STA:WCLARK

ARA/ECP:MDAVILA

STR:SCOFFIELD (PARA 4)

MARAD:FRAITER (SUBS)

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O 291754Z JAN 76

FM SECSTATE WASHDC

TO AMEMBASSY GUATEMALA IMMEDIATE

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E.O. 11652: N/A

TAGS: EWWT, GT

SUBJECT: DISCRIMINATORY SHIPPING PRACTICES: FEBRUARY 14
DEADLINE

REF: A) STATE 7843; B) GUATEMALA 410; C) GUATEMALA 411

1. FMC APPRECIATES WELL THOUGHT OUT POINTS RAISED PARA 1,
REF C. FMC RESPONSE FOLLOWS:

A) FMC IS INVESTIGATING THIS POINT AND WILL REALIGN ITS
REGULATION IF NECESSARY;

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B) FMC MAY REWRITE ITS REGULATION TO INCLUDE ALL ASSOCIATED CARRIERS. HOWEVER, DELTA, IN ANY CASE, WOULD NOT IMMEDIATELY BECOME AN ASSOCIATED LINE AS A RESULT OF A SIGNED AGREEMENT WITH FLOMERCA SINCE, AS WILL BE SEEN BELOW, THE AGREEMENT WOULD NOT COME INTO FORCE UNTIL APPROVED BY FMC, WHICH COULD TAKE MONTHS OR YEARS;

C) GOG DELEGATES SOME OF ITS WAIVER-GRANTING AUTHORITY TO THE CARRIERS. FMC CANNOT DO THIS. ADDITIONALLY, FMC CANNOT ENVISION ANY WAY TO RATIONALLY ISSUE WAIVERS IN THOSE CASES WHERE ONLY CARRIER AVAILABLE IS FLOMERCA OR ANOTHER "FAVORED" CARRIER. IN ANY EVENT, FMC DOES NOT BELIEVE IT IS NECESSARY THAT OUR EQUALIZATION MEASURE BE TAILORED TO PRECISELY MIRROR THE GUATEMALAN PRACTICES.

2. FMC AND DEPARTMENT GREATLY APPRECIATE DETAILED ANALYSIS AND SUGGESTIONS CONVEYED BY REF B AND IN PARTICULAR ARE CAREFULLY CONSIDERING EMBASSY'S SUGGESTION IN PARA 17 FOR SHORT EXTENSION OF THE FEBRUARY 14 DEADLINE. HOWEVER, AS EMBASSY REPORTS IN REF B. GUATEMALANS APPEAR TO HAVE NO INTENTION OF MAKING ANY SERIOUS ATTEMPT TO WITHDRAW OR EVEN AMEND THEIR PRESENT DISCRIMINATORY LEGISLATION. ADDITIONALLY, WHILE RUMORS AND REPORTS OF DELTA/FLOMERCA AGREEMENT ABOUND, NONE HAS BEEN SIGNED. IN THE ABSENCE OF ANY EVIDENCE THAT GOG INTENDS TO ALTER ITS LEGISLATION AND IN THE ABSENCE OF THE REPORTED DELTA/FLOMERCA AGREEMENT, FMC WILL HAVE TO PUBLISH ITS REGULATION ON FEBRUARY 14 AND BEGIN COLLECTING EQUALIZATION FEES. IF, ON THE OTHER HAND, FMC RECEIVES EVIDENCE OF GOG ACTION, IT MAY BE WILLING TO DELAY ITS DEADLINE FOR A FEW WEEKS TO ENABLE THE GOG TO AMEND ITS LEGISLATION AND PRACTICES. IF THE LONG-HERALDED DELTA/FLOMERCA AGREEMENT WERE TO BE SIGNED, IT IS POSSIBLE THAT THE FMC, WHILE SKEPTICAL THAT THIS COULD SOLVE THE PROBLEM, WOULD AGREE TO POSTPONE ITS DEADLINE TEMPORARILY WHILE STUDYING THE AGREEMENT. HOWEVER, SINCE IN EITHER CASE THE BASIC DISCRIMINATORY SITUATION MIGHT STILL REMAIN, ANY DELAY IN THE DEADLINE MIGHT ONLY BE FOR A FEW WEEKS, ESPECIALLY IF ALL WE RECEIVE IS A SIGNED DELTA/FLOMERCA AGREEMENT.

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3. FMC'S APPROVAL OF A DELTA/FLOMERCA AGREEMENT IS BY NO MEANS A FOREGONE CONCLUSION, AND EVEN IF THE FMC WERE INCLINED TO APPROVE AN AGREEMENT, THE APPROVAL PROCEDURE COULD EASILY STRETCH OUT FOR MONTHS OR YEARS AS OTHER CARRIERS WISHING TO COMPETE IN THE TRADE CHALLENGE THE AGREEMENT IN FORMAL FMC PROCEEDINGS.

4. REGARDING USG ACTION UNDER SECTION 301 OF THE TRADE

ACT, SPECIAL TRADE REPRESENTATIVE'S OFFICE CONCURS THAT GOG MUST PROVIDE SPECIFIC EVIDENCE OF ITS INTENTIONS TO RESOLVE THIS SITUATION, AND STR HAS COMMUNICATED THIS THROUGH ATTORNEYS REPRESENTING GUATEMALA EMBASSY IN WASHINGTON. DEPARTMENT'S ASSESSMENT IS THAT IF GOG WOULD PROVIDE US WITH THE EVIDENCE WE ARE SEEKING, OR IF A DELTA/FLOMERCA AGREEMENT WERE TO BE SIGNED, THE TRADE POLICY REVIEW GROUP WOULD CONSIDER THESE DEVELOPMENTS CAREFULLY BEFORE DECIDING WHETHER TO RECOMMEND TO THE PRESIDENT THAT THE USG TAKE OFFSETTING ACTION UNDER THE TRADE ACT.

5. ACTION REQUESTED I: EMBASSY SHOULD CONTINUE TO PRESS GOG FOR EVIDENCE THAT IT SERIOUSLY INTENDS TO AMEND OR WITHDRAW ITS DISCRIMINATORY LEGISLATION. IF SUCH EVIDENCE IS AVAILABLE, DEPARTMENT CAN RECOMMEND TO THE FMC THAT IT DELAY ITS DEADLINE TO ENABLE GOG INTENTIONS TO BE TRANS-LATED INTO LEGISLATIVE ACTION ONCE THE GUATEMALAN CONGRESS RECONVENES. IDEALLY, THE MOST PERSUASIVE EVIDENCE WOULD BE A FORMAL WRITTEN COMMUNICATION FROM THE GOG AFFIRMING ITS INTENTIONS, AND IF POSSIBLE, ENCLOSING TEXT OF DRAFT LEGISLATION TO BE INTRODUCED IN THE CONGRESS. AT THE SAME TIME, IT WOULD BE MOST HELPFUL IF, IN THE INTERIM GOG COULD ISSUE BLANKET WAIVERS TO ALLOW ALL CARRIERS IN THE TRADE TO CARRY CARGOES TO GUATEMALA WITHOUT FEAR OF PENALTY. WE RECOGNIZE THAT ALL OF THIS MAY BE IMPOSSIBLE FOR THE GOG TO PRODUCE, BUT THE MORE EVIDENCE WE HAVE, THE BETTER CHANCES 'ILL BE FOR CONVINCING THE FMC NOT TO IMPLEMENT ITS EQUALIZATION FEES ON FEB. 14. CLEARLY, FURTHER GOG ORAL ASSURANCES WILL NOT SUFFICE.

6. ACTION REQUESTED II: WHEN, AS CAN BE EXPECTED, THE GOG RAISES THE POSSIBILITY OF A DELTA/FLOMERCA AGREEMENT LIMITED OFFICIAL USE

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AS A SOLUTION TO THE SITUATION, YOU SHOULD ONLY COMMENT THAT WHILE IT NOW APPEARS A PRIVATE COMMERCIAL SOLUTION MAY NO LONGER SUFFICE, IT WOULD CLEARLY BE IN THE BEST INTERESTS OF THE GOG THAT ANY SUCH AGREEMENT BE BROUGHT TO THE ATTENTION OF THE FMC AT ONCE. BE CERTAIN THAT THE GUATEMALAN AUTHORITIES REALIZE THAT EVEN IF THE FMC 'ERE TO APPROVE SUCH AN AGREEMENT, THE APPROVAL MIGHT TAKE MONTHS OR EVEN YEARS, AND AFTER STUDYING THE PROPOSED AGREEMENT, THE FMC MIGHT 'ELL DECIDE THAT CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE STILL EXIST AND WOULD THEREFORE REISSUE ITS DEADLINE FOR WITHDRAWAL OF THE GUATEMALAN DISCRIMINATORY LEGISLATION. KISSINGER

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To: GUATEMALA
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